

REMARKS

Claims 1-5, 11 and 12 are pending in the instant application. Claims 6-10, 13 and 14 stand canceled. Claim 12 has been canceled without prejudice. Claims 1-5 have been amended to correct typographical errors and to more clearly delineate the claimed subject matter. No new matter is introduced.

Amendment of any claim herein is not to be construed as acquiescence to any of the rejections/objections set forth in the instant Office Action, and was done to expedite prosecution of the application. Applicants make these amendments without prejudice to pursuing the original subject matter of this application in a later filed application claiming benefit of the instant application, including without prejudice to any determination of equivalents of the claimed subject matter.

Claim Objections

Claim 12 is objected to, allegedly due to a typographical error. Applicants believe the Examiner is referring to claim 1. Claim 1 has been amended to correct the typographical error. Applicants submit that the objection is overcome and withdrawal of the objection is respectfully requested.

Rejection under 35 U.S.C. 112, second paragraph

Claims 2 and 5 are rejected as allegedly uncertain regarding the antecedent basis of certain terms of the claims. Claims 2 and 5 have been amended. Claim 12 has been canceled. Applicants submit that the rejections are overcome and withdrawal of the rejection is respectfully requested.

Rejection under 35 U.S.C. 112, first paragraph

Claims 1-5, 11, and 12 are rejected as allegedly failing to comply with the written description requirement. It is alleged that the claims fail to provide support for the phrase “aqueous alkali solution of hop acids.” Applicants disagree and respectfully traverse.

The MPEP (8th edition, Revision No. 7) states at section 2163.02, that written description can be demonstrated by the following:

an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention...Possession may be shown in a variety of ways including description of an actual reduction to practice...

Applicants submit that the hop acids used in the Examples of the Applicants' specification can be found at Example 10, which lists a number of commercially available hop acid products. Such products include IsohopTM, BetastabTM, AlphahopTM, TetrahopTM, HexahopTM, HHBATM, and RedihopTM. Applicants submit that one of ordinary skill in the art is aware that such hop acid products include the hop acids as an aqueous alkali solution.

Applicants contend that prior to the filing and/or priority date of the instant application, those of ordinary skill in the art were aware that IsohopTM, BetastabTM, AlphahopTM, TetrahopTM, HexahopTM, HHBATM, and RedihopTM were aqueous alkaline solutions of hop acids. Attached as Exhibit A are the certificates of analyses for the above hop products, which were provided to the purchasers of the above hop products as early as 1999 or 2000. Each certificate of analysis states that each of the above hop products comprises an aqueous alkaline solution of a salt of a hop acid. Such disclosures to purchasers indicate that those of ordinary skill in the art (the purchasers) were aware that the hop products were aqueous alkaline solutions of hop acids.

Also attached as Exhibit A are copies of brochures for Isohop, Redihop, and Tetrahop produced by a company called Cultor Food Science Brewing Ingredients. The brochures describe the hop products as being "aqueous alkaline solutions". Applicants contend that the Cultor brochure was a publically distributed document.

Further, the product data information for the above-mentioned products is either publicly available or known to those of ordinary skill in the art. For example, the product specifications of IsohopTM, TetrahopTM, HexahopTM, and RedihopTM can be found at the following website: http://www.barthhaasgroup.com/index.php?option=com_content&task=view&id=24&Itemid=26.

Although the documents in Exhibit A indicate that an “alkaline” solution of hop acids was provided, Applicants’ claims provide for the term “alkali” for the sake of accuracy. Applicants contend that the term “alkaline” is known in the art to refer to: a) any basic (non acidic) solution; or b) salt of a 2+ metal, such as magnesium or calcium. Applicants further contend that the term “alkali” is used in the instant claims because the hop products, e.g., IsohopTM, BetastabTM, etc., for the sake of accuracy as the products are potassium salt (1+ metal) solutions (see Exhibit A documents).

Applicants thus contend that the specification, particularly when read in light of Examples 1-10, clearly allows one of ordinary skill in the art to recognize that Applicants were in possession of the invention directed to preparing an organic food supplement using an aqueous alkali solution of hop acids. Applicants submit that the rejection is obviated and respectfully request that the rejection be withdrawn.

In view of the above amendments and arguments, Applicants believe the pending application is in condition for allowance. Should any of the claims not be found to be allowable, the Examiner is requested to telephone Applicants’ representative at the number below. Applicants thank the Examiner in advance for this courtesy. The Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 51035-61843 USN.

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Respectfully submitted,

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